

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROL DEMIZIO AND ANTHONY	:	CIVIL ACTION
DEMIZIO in their own right and as	:	
ADMINISTRATORS OF THE ESTATE	:	NO. 05-409
OF MATTHEW DEMIZIO, Decedent	:	
	:	
v.	:	
	:	
GEICO GENERAL INSURANCE	:	
COMPANY	:	

MEMORANDUM AND ORDER

Juan R. Sánchez, J

July 19, 2005

Carol and Anthony DeMizio ask this Court to determine whether they are entitled to underinsured motorist coverage following a motor vehicle accident that killed their son. GEICO General Insurance Company (GEICO) claims the DeMizios' recovery of underinsured motorist benefits is precluded by a household exclusion in the DeMizios' policy. The DeMizios claim the household exclusion is void as against the public policy of Pennsylvania's Motor Vehicle Financial Responsibility Law (MVFRL). This Court finds the household exclusion provision in the DeMizio's policy is valid and forecloses the DeMizio's claim to additional benefits.

FACTS

GEICO insured the DeMizios' four vehicles through a single auto insurance policy (Maryland policy). In July 2004, GEICO sent the DeMizios an auto insurance renewal questionnaire for information about the vehicles and drivers GEICO insured, including the location of each vehicle. The DeMizios told GEICO their son, Matthew DeMizio, resided in Maryland, but attended school in Pennsylvania where the vehicle he drove was garaged. As a result, GEICO told the DeMizios to purchase a second policy on Matthew's vehicle

in Pennsylvania, which they did (Pennsylvania policy). GEICO charged the DeMizios' \$1923.90 every six months for the Pennsylvania policy, a premium significantly higher than the premium for the same vehicle when it was listed on the Maryland policy.

On November 11, 2004, Matthew DeMizio was killed by a drunk driver while driving his car in Ardmore, Pennsylvania. Following Matthew's accident, GEICO paid the DeMizios \$100,000 of under insured motorist (UIM) coverage, the UIM limits under the Pennsylvania policy. The DeMizios also asked GEICO to tender the \$300,000 UIM limit under the Maryland policy. GEICO refused, claiming the DeMizios were entitled only to the UIM coverage under the Pennsylvania policy.

The DeMizios argue the Pennsylvania policy allows stacking, which permits them to "stack" their Pennsylvania and Maryland insurance coverage and recover under both policies. GEICO agrees the Pennsylvania policy permits stacking, but argues the DeMizios cannot recover additional money because of the household exclusion clause in their Maryland policy. The DeMizios admit their Maryland policy contains a household exclusion provision, but argue the Pennsylvania policy is controlling and the household exclusion clause is void as against the public policy of Pennsylvania's MVFRL.

DISCUSSION

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56. In a motion for summary judgment, the moving party bears the burden of proving no genuine issue of material fact is in dispute. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348 (1986). After reviewing all of the evidence in the record, the Court must draw all reasonable inferences in favor of the nonmoving party. *Id.* "This does not require a court to turn a blind eye to the weight of the evidence" *Big*

Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992) (citing *Matsushita*, 475 U.S. at 586). Rather, “when the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita*, 475 U.S. at 586. The nonmoving party must “come forward with specific facts showing there is a genuine issue for trial.” *Matsushita*, 475 U.S. at 587 (citing Fed.R.Civ.P. 56(e)).

A motion for summary judgment will not be denied because of the mere existence of some evidence in support of the nonmoving party. The nonmoving party must present sufficient evidence for a jury to reasonably find for them on that issue. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). “Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” *Matsushita* 475 U.S. at 587.

“The interpretation of a contract of insurance is a matter of law for the courts to decide.” *Paylor v. The Hartford Insurance Co.*, 640 A.2d 1234, 1235 (Pa. 1994). When policy language is clear and unambiguous, the court must give the policy its plain meaning and effect. *Id.* It is undisputed the GEICO policy is clear and unambiguous.

The DeMizio’s Pennsylvania policy permits stacking. “[S]tacking refers to the practice of allowing an insured to aggregate or stack the coverage limits of each vehicle covered under an insurance policy to pay for damages sustained in an accident.” *Rupert v. Liberty Mut. Ins. Co.*, 291 F.3d 243, 244 (3d Cir. 2002). Stacking permits the DeMizio’s to look to their Maryland policy as a source of additional recovery of UIM benefits. The mere presence of stacked limits, however, does not guarantee recovery.

Under Pennsylvania law, a household exclusion clause defeats a stacking clause.¹ *State Farm Fire & Cas. Co. v. Craley*, 844 A.2d 573, 574 (Pa. Super. 2004). “When the occupied vehicle is insured under a separate policy, the [household exclusion] clause prohibits the ‘stacking’ of [] underinsured coverage across multiple insurance policies. The claimant may recover under the policy covering the occupied vehicle, but cannot add coverage provided by the policy containing the exclusion.” *Nationwide Mut. Ins. Co. v. Hampton*, 935 F.2d 578, 587 (3d Cir. 1991). “[B]y inserting a household exclusion in a policy, [therefore,] an insurer can preclude stacking by otherwise covered insureds” *Nationwide Mut. Ins. Co. v. Harris*, 826 A.2d 880, 885 (Pa. Super. 2003). *See also Craley*, 844 A.2d at 574 (“[w]hatever the rules relating to stacking, the household vehicle exclusion clause is valid and enforceable, and does not violate public policy.”)

The DeMizio’s Maryland policy contains a household exclusion provision.² This provision prevents the DeMizios from stacking the UIM limits under the Maryland policy on top of the UIM limits under the Pennsylvania policy. This Court, therefore, has no choice but to reject the DeMizio’s claim of entitlement to additional UIM benefits.

Plaintiffs argue the application of the household exclusion provision is void as against Pennsylvania public policy. The household exclusion provision at issue, however, is the household exclusion contained in the Maryland policy. Under Maryland law, the household exclusion clause is valid and enforceable. *See Powell v. State Farm Mut. Auto.*

¹ Stacking is flatly prohibited in Maryland. *See* Md. Insurance Code § 19-513

² The exclusion states: “[b]odily injury sustained by an insured while occupying a motor vehicle owned by an insured and not described in the declaration and not covered by the bodily injury and property damage liability coverages of this policy is not covered.”

Ins. Co., 585 A.2d 286 (Md. Ct. Spec. App. 1991) (holding household exclusions in liability insurance policies are valid and enforceable).

Even if the Plaintiffs are correct and it is the Pennsylvania household exclusion provision that controls, Plaintiff's public policy argument still fails. Pennsylvania courts confronting the household exclusion clause have generally upheld the exclusion. *Ridder*, 105 F.Supp.2d at 436; *Nationwide Mutual Insurance Company v. Riley*, 352 F.3d 804, 809 (3d. Cir. 2003); *Paylor v. Hartford Ins. Co.*, 536 Pa. 583 (Pa. 1994). These courts have expressed concern that invalidating the household exclusion provision will require insurance companies to underwrite unknown risks which the insurance company "likely had no knowledge and for which it neither contracted, nor was paid." *Ridder*, 105 F.Supp.2d at 438. *See Burstein v. Prudential Prop. & Cas. Ins. Co.*, 809 A.2d 204, 208 (Pa. 2002)(stating "insureds are prevented from receiving gratis coverage, and insurers are not compelled to subsidize unknown and uncompensated risks by increasing insurance rates comprehensively"); *Riley*, 352 F.3d at 811("voiding the exclusion clause would therefore allow [] added under insurance policy recoveries, and force [the insurance company] to pay for items not factored into its risk calculations"). Courts have also reasoned that invalidating a household exclusion provision will improperly "relieve an insured or his family from the failure to purchase adequate liability coverage." *Paylor*, 640 A.2d at 1240.

GEICO accepted and insured the risk of Matthew's vehicle under the Pennsylvania policy and GEICO has paid the UIM limits under that policy. GEICO did not accept nor insure the risks associated with Matthew's vehicle under the Maryland policy and therefore, the DeMizios are not entitled to UIM benefits under that policy. Accordingly, we enter the following:

ORDER

And now this 19th day of July, 2005, it is hereby ORDERED that Plaintiff's Motion for Summary Judgment (Doc. 9) is DENIED. Defendant's Motion for Summary Judgment (Doc. 14 & Doc. 17) and Defendant's Partial Motion for Summary Judgment (Doc.16 & Doc. 18) are GRANTED. The Clerk is directed to mark this case CLOSED.

BY THE COURT:

Juan R. Sánchez, J.